

REMARKS

This Amendment is filed concurrently with a Request for Continued Examination based on a telephone conference with the Examiner to discuss the outstanding claims and cited references. Applicants respectfully traverse the contentions of any and all official notices listed in the Office Action and traverse the outstanding rejections. Amendments have been made to the outstanding claims for clarification purposes.

Examiner's Interview

Applicants respectfully request that the Examiner contact the undersigned attorney if, after review of the amendment, it is believed that the claims are still not in condition for allowance. The undersigned attorney believes that the interview will facilitate prosecution of the subject application.

Rejections Under 35 U.S.C. § 103

1. Claims 37-40, 43-46 and 48 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted prior art (APA) in view of Bedard (U.S. Patent No. 5,801,747). Applicants respectfully traverse this rejection in its entirety and contend that a *prima facie* case of obviousness has not been established.

As the Examiner is aware, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. *See MPEP § 2143; see also In Re Fine, 873 F. 2d 1071, 5 U.S.P.Q.2D 1596 (Fed. Cir. 1988).* Herein, the combined teachings of the cited references fail to describe or suggest all the claim limitations.

With respect to independent claim 37 for example, Applicants respectfully submit that neither APA nor Bedard, alone or in combination, describes or suggests "*continuously* preventing rollover of count values by adjusting the relative statistics of each item...in response to a count value...reaching a predetermined value." Emphasis added. As claimed, rollover is a condition where the count value of the first item of the one or more items, which is a relative statistic of the first item, reaches a value before being reset.

Bedard teaches decrementing viewing units associated with entries of a viewer profile array (200) until an entry of the viewer profile array (200) reaches zero. *See Col. 5, lines 59-66 of Bedard.* This decrementing of the viewing unit values for each entry of the viewer profile is performed in order to add a new entry at the top of the viewer profile array (200). *See Col. 5, lines 66 to Col. 6, line 4 of Bedard.* Such actions are in response to the lack of room in the viewer profile array (200) for the new entry, and these actions are not in response to the count value (viewing unit values of the entry) reaching the predetermined value as claimed. Moreover,

the decrementing of viewing units does not provide any teaching for continuously preventing a rollover condition since the decrementing operation is not controlled for prohibiting the count value from ever experiencing a rollover condition. Withdrawal of the outstanding §103(a) rejection is respectfully requested.

With respect to claims 38-40, 43-46 and 48, Applicants respectfully submit that such claims are in condition for allowance based on the lack of establishing a *prima facie* case of obviousness. Since these claims are dependent on independent claim 37, which is considered to be in condition for allowance, no further discussions as to the allowability of these claims is warranted.

Therefore, withdrawal of the §103(a) rejection as applied to claims 37-40, 43-46 and 48 is respectfully requested.

2. Claims 41 and 42 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted prior art (APA) in view of Bedard and Graves (U.S. Patent No. 5,410,344). Applicants respectfully traverse this rejection in its entirety and contend that a *prima facie* case of obviousness has not been established for the reasons denoted above and neither Bedard nor Graves, alone or in combination, describe or suggest *multiplying relative statistics for each item of the one or more items by a weighting factor assigned to the item*, and (ii) ranking a predetermined number of items based on the highest weighted values as part of the list of favorites. Emphasis added. Rather, Bedard does not describe or suggest this claim limitation. Graves describes *synaptic weights* and these weights do not constitute the weighting factor as claimed. Applicants respectfully request reconsideration.

Moreover, since claims 41 and 42 are dependent on independent claim 37, which is considered to be in condition for allowance, no further discussions as to the allowability of these claims is warranted. Withdrawal of the outstanding §103(a) rejection is respectfully requested.

3. Claim 47 was rejected under 35 U.S.C. §103(a) as being unpatentable over Applicant's admitted prior art (APA), in view of Bedard and Rothmuller (U.S. Patent No. 5,635,989). Applicants respectfully traverse this rejection in its entirety and contend that a *prima facie* case of obviousness has not been established, but further discussion of the grounds for traverse is not warranted based on its dependency on independent claim 37, which is considered to be in condition for allowance. Applicants respectfully request that the outstanding §103(a) rejection be withdrawn and reserve the right to submit such arguments in the event that an Appeal is necessary.

4. Claims 20-22, 25, 27, 29-31, 33, 34, 36, 46, 48-53, and 55-57 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted prior art (APA) in view of Saib (U.S. Patent No. 5,973,682) and Bedard. Applicants respectfully traverse this rejection in its entirety and contend that a *prima facie* case of obviousness has not been established.

For instance, with respect to claim 34, Applicants respectfully submit that neither APA, Saib nor Bedard, alone or in any combination, suggests a receiver coupled to the display and that is adapted to maintain the relative statistics related to a plurality of items of the tuning event, to *always prevent rollover* of a count value by *automatically adjusting the count value* of each of

the plurality of items relative to each other *once one of the plurality of items reaches a maximum value* so that an order of the plurality of items according to count value remains intact. Emphasis added.

Moreover, for independent claims 25 and 49, rollover (considered by the Examiner as mere decrementing of viewing units per Bedard) is *always prevented* or any occurrences of rollover are *eliminated* through adjustment of the count value when the count value reaching a predetermined value as claimed. Rather, the combined teaching of the cited references is directed to decrementing the viewing units (alleged to be "count value") in response to no further storage availability within the viewing profile array. There is no suggestion or mechanism provided by the cited references that will enable rollover to be eliminated or always prevented as claimed.

Applicants respectfully request that the outstanding §103(a) rejection be withdrawn and reserve the right to submit such arguments in the event that an Appeal is necessary..

With respect to claims 20-22, 27, 29-31, 33, 36, 46, 48, 50-53, and 55-57, Applicants respectfully submit that such claims are in condition for allowance based on the lack of establishing a *prima facie* case of obviousness. Since these claims are dependent on independent claim 25, 34 and 49, which is considered to be in condition for allowance, no further discussions as to the allowability of these claims is warranted.

5. Claims 23 and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted prior art (APA) in view of Saib, Bedard and Finseth (U.S. Patent No. 6,813,775). Applicants respectfully traverse this rejection in its entirety and contend that a *prima facie* case of obviousness has not been established. Since these claims are dependent on independent claim 25 and 34, which are considered to be in condition for allowance, no further discussions as to the allowability of these claims is warranted.

6. Claims 26, 35, and 47 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted prior art (APA) in view of Saib in view of Bedard and Rothmuller. Applicants respectfully traverse this rejection in its entirety and contend that a *prima facie* case of obviousness has not been established. Since these claims are dependent on independent claim 25 and 34, which are considered to be in condition for allowance, no further discussions as to the allowability of these claims is warranted.

7. Claim 54 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted prior art (APA) in view of Saib, Bedard and Graves (U.S. Patent No. 5,410,344). Applicants respectfully traverse this rejection in its entirety and contend that a *prima facie* case of obviousness has not been established. Claim 54 depends on independent claim 49. Thus, this claim is allowable based on its dependency on allowable claim 49. Applicants respectfully reserve the right to further submit additional grounds for traversing the rejection if an appeal is warranted.

Conclusion

In light of the foregoing, Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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